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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,163	02/27/2004	Haruo Kawashima	12010-0056	4596
22902	7590	10/11/2007		
CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005			EXAMINER TOMPKINS, ALISSA JILL	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 10/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/787,163

Applicant(s)

KAWASHIMA ET AL.

Examiner

Alissa J. Tompkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6-8, and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

Applicant's amendment filed on 3/30/2007 has been received. Claims 1-10 are pending. The Applicant addressed that the 102 (b) rejection was improper since the patent was not prior art. The applicant is correct about this issue and the Examiner apologizes for the mistake. The prior art of Yokota is not valid art against claim 1 and the rejection based on Yokota has been withdrawn and a new non-final rejection appears below.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawashima (U.S. 6,721,963) in view of Krupicka (U.S. 4,251,076). Kawashima discloses swimming goggles comprising a pair of lens assemblies. Each lens assembly includes an eye cup having a skirt 16 configured to be held in close contact with a user's face to form a seal to keep water out of a user's eye. A link 17 connects the lens

assemblies to each other. A strap 12 is attached to both ends of the connected eye cups and is configured to be worn around the head of the wearer. The lens assemblies have a transverse direction horizontally extending across said head and a longitudinal direction vertically extending orthogonally to the transverse direction.

However, Kawashima is missing a lens assembly wherein the lens included in each of the lens assemblies is divided into an intermediate section extending across the lens at a substantially middle level as viewed in a vertical direction, an upper section lying above the intermediate section and a lower section lying below the intermediate section wherein the intermediate section presents a see-through clarity lower than those presented by the upper section and the lower section. Kawashima is also missing a belt-like portion formed integrally with the eye-cups. Krupicka discloses a pair of swimming goggles comprising a pair of lenses 16 and 18 that are connected together by a nose engaging bridge 12. The lens assemblies have a transverse direction horizontally extending across said head and longitudinal direction vertically extending orthogonally to the transverse direction. Each lens has an intermediate section 22 that extends across the lens at a substantially middle level. The intermediate section is in the form of a bar 22, which forms a belt across the lenses. Krupicka does not explicitly state how the see-through clarity is specified, but the drawings indicate that the bar is a solid piece of material and therefore it would be inherent that the bar is at least opaque because it is used and seen as a single cross (Figures 1 and 3), consequently giving the intermediate section a total luminous transmittance of substantially 0%. An upper and lower section of the lenses are located above and below the intermediate section

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respectively. The upper and lower sections have a much higher see through clarity than the intermediate section. The intermediate section has a width of .25 inches (Column 2, 54-57), which is equivalent to 6.35mm. Kawashima and Krupicka both disclose forms of eyewear. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Krupicka to modify Kawashima in order to provide eyewear that can provide alignment to the wearer during sporting activities.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5 and 9 have been considered but are moot in view of the new ground(s) of rejection. It is noted by the Examiner that the applicant does not argue the combination of Krupicka on a goggle in the request for reconsideration dated 3/30/2007.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sheldon (U.S. 2002/0191148) shows a pair of goggles having eye cups.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

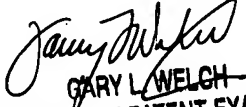
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins  
Patent Examiner  
Art Unit 3765  
October 4, 2007

AJT

  
GARY L. WELCH  
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